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Ally Financial Inc.

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO/OAKLAND DIVISION**

JESUS CERDA

Plaintiff,

v.

ALLY FINANCIAL
CAPITAL ONE BANK USA NA
COMENITY BANK EXPRESS
CREDIT ONE BANK NA
DISCOVER BIN SVCS LLC
ISAC
MACYS/DSNB
SYNBC/CARE CREDIT
ABILITY RECOVERY SERVICES
CONVERGENT OUTSOURCING
COMCAST
JEFFERSON CAPITAL SYST
AES/SUNTRUST BANK
ILL STUDENT ASST. CO.
EXPERIAN
TRANS UNION LLC
EQUIFAX
DOES 1-10,

Defendants

Case No. 22-cv-05188-TLT

**ALLY FINANCIAL INC.'S
ANSWER AND AFFIRMATIVE
DEFENSES**

1 Defendant Ally Financial Inc. (“Ally”), by counsel, submits this Answer with
2 Affirmative Defenses in response to the Complaint filed by Plaintiff Jesus Cerda
3 (“Plaintiff”).

4 ANSWER

5 Ally admits that Plaintiff is suing Defendants for alleged violations of the
6 Fair Debt Collection Practices Act (“FDCPA”) 15 U.S.C. § 1692, alleged violations
7 of the Fair Credit Reporting Act (“FCRA”) 15 U.S.C. § 1681, and alleged
8 violations of the California Rosenthal Fair Debt Collection Practices Act Cal. Civil
9 Code § 1788. Ally denies that it has violated those laws or any other laws the
10 Plaintiff has alleged in the unnumbered paragraph following the title
11 COMPLAINT. The allegations in that unnumbered paragraph contain statements
12 and conclusions of law to which no response is required. To the extent the
13 allegations are contrary to law, they are denied.

14 JURISDICTION AND VENUE

15 1. Ally admits it conducts business in the state of California. The
16 remaining allegations in Paragraph 1 of the Complaint contain statements and
17 conclusions of law to which no response is required. To the extent the allegations
18 are contrary to law, they are denied.

19 2. The allegations in Paragraph 2 of the Complaint contain statements
20 and conclusions of law to which no response is required. To the extent the
21 allegations are contrary to law, they are denied.

22 PARTIES

23 3. Ally admits Plaintiff is a natural person. Ally is without sufficient
24 knowledge or information to either admit or deny the remaining allegations in
25 Paragraph 3 and, therefore, denies the same.

26 4. The allegations in Paragraph 4 of the Complaint contain statements
27 and conclusions of law to which no response is required. To the extent the
28

1 allegations are contrary to law, they are denied.

2 5. The allegations in Paragraph 5 of the Complaint refer to another party
3 of which Ally is without sufficient knowledge or information to either admit or
4 deny and, therefore, denies the same.

5 6. The allegations in Paragraph 6 of the Complaint refer to another party
6 of which Ally is without sufficient knowledge or information to either admit or
7 deny and, therefore, denies the same.

8 7. The allegations in Paragraph 7 of the Complaint refer to another party
9 of which Ally is without sufficient knowledge or information to either admit or
10 deny and, therefore, denies the same.

11 8. The allegations in Paragraph 8 of the Complaint refer to another party
12 of which Ally is without sufficient knowledge or information to either admit or
13 deny and, therefore, denies the same.

14 9. The allegations in Paragraph 9 of the Complaint refer to another party
15 of which Ally is without sufficient knowledge or information to either admit or
16 deny and, therefore, denies the same.

17 10. The allegations in Paragraph 10 of the Complaint refer to another party
18 of which Ally is without sufficient knowledge or information to either admit or
19 deny and, therefore, denies the same.

20 11. The allegations in Paragraph 11 of the Complaint refer to another party
21 of which Ally is without sufficient knowledge or information to either admit or
22 deny and, therefore, denies the same.

23 12. The allegations in Paragraph 12 of the Complaint refer to another party
24 of which Ally is without sufficient knowledge or information to either admit or
25 deny and, therefore, denies the same.

26 13. The allegations in Paragraph 13 of the Complaint refer to another party
27 of which Ally is without sufficient knowledge or information to either admit or
28

1 deny and, therefore, denies the same.

2 14. The allegations in Paragraph 14 of the Complaint refer to another party
3 of which Ally is without sufficient knowledge or information to either admit or
4 deny and, therefore, denies the same.

5 15. The allegations in Paragraph 15 of the Complaint refer to another party
6 of which Ally is without sufficient knowledge or information to either admit or
7 deny and, therefore, denies the same.

8 16. The allegations in Paragraph 16 of the Complaint refer to another party
9 of which Ally is without sufficient knowledge or information to either admit or
10 deny and, therefore, denies the same.

11 17. The allegations in Paragraph 17 of the Complaint contain statements
12 and conclusions of law to which no response is required. To the extent the
13 allegations are contrary to law, they are denied.

14 18. The allegations in Paragraph 18 of the Complaint refer to another party
15 of which Ally is without sufficient knowledge or information to either admit or
16 deny and, therefore, denies the same.

17 19. The allegations in Paragraph 19 of the Complaint refer to another party
18 of which Ally is without sufficient knowledge or information to either admit or
19 deny and, therefore, denies the same.

20 20. The allegations in Paragraph 20 of the Complaint refer to another party
21 of which Ally is without sufficient knowledge or information to either admit or
22 deny and, therefore, denies the same.

23 21. The allegations in Paragraph 21 of the Complaint contain statements
24 and conclusions of law to which no response is required. To the extent the
25 allegations are contrary to law, they are denied.

26 22. The allegations in Paragraph 22 are denied.

27 23. The allegations in Paragraph 23 of the Complaint contain statements
28

1 and conclusions of law to which no response is required. To the extent the
2 allegations are contrary to law, they are denied.

3 24. Ally denies the allegations in Paragraph 24 of the Complaint
4 pertaining to it. The remaining allegations contain statements and conclusions of
5 law to which no response is required. To the extent the allegations are contrary to
6 law, they are denied.

7 25. The allegations in Paragraph 25 of the Complaint contain statements
8 and conclusions of law to which no response is required. To the extent the
9 allegations are contrary to law, they are denied.

10 **FACTUAL ALLEGATIONS**

11 26. The allegations in Paragraph 26 of the Complaint contain statements
12 and conclusions of law to which no response is required. To the extent the
13 allegations are contrary to law, they are denied.

14 27. Ally denies the allegations in Paragraph 27 of the Complaint
15 pertaining to it. The remaining allegations in Paragraph 27 of the Complaint contain
16 statements and conclusions of law to which no response is required. To the extent
17 the allegations are contrary to law, they are denied.

18 28. The allegations in Paragraph 28 of the Complaint contain statements
19 and conclusions of law to which no response is required. To the extent the
20 allegations are contrary to law, they are denied.

21 29. The allegations in Paragraph 29 of the Complaint contain statements
22 and conclusions of law to which no response is required. To the extent the
23 allegations are contrary to law, they are denied.

24 30. Ally denies the allegations in Paragraph 30 of the Complaint
25 pertaining to it. The remaining allegations regard other parties, to which Ally is
26 without sufficient information or knowledge to either admit or deny and, therefore,
27 denies the same.
28

1 31. Ally denies the allegations in Paragraph 31 of the Complaint
2 pertaining to it. The remaining allegations regard other parties, to which Ally is
3 without sufficient information or knowledge to either admit or deny and, therefore,
4 denies the same.

5 32. The allegations in Paragraph 32 of the Complaint refer to documents
6 which speak for themselves. To the extent the allegations are contrary to the
7 documents, they are denied.

8 33. The allegations in Paragraph 33 of the Complaint refer to documents
9 which speak for themselves. To the extent the allegations are contrary to the
10 documents, they are denied.

11 34. The allegations in Paragraph 34 of the Complaint refer to documents
12 which speak for themselves. To the extent the allegations are contrary to the
13 documents, they are denied.

14 35. The allegations in Paragraph 35 of the Complaint contain statements
15 and conclusions of law to which no response is required. To the extent the
16 allegations are contrary to law, they are denied.

17 36. The allegations in Paragraph 36 of the Complaint contain statements
18 and conclusions of law to which no response is required. To the extent the
19 allegations are contrary to law, they are denied.

20 37. The allegations in Paragraph 37 of the Complaint contain statements
21 and conclusions of law to which no response is required. To the extent the
22 allegations are contrary to law, they are denied.

23 38. The allegations in Paragraph 38 of the Complaint refer to documents
24 which speak for themselves. To the extent the allegations are contrary to the
25 documents, they are denied.

26 39. Ally denies the allegations in Paragraph 39 of the Complaint
27 pertaining to it. The remaining allegations in Paragraph 39 refer to other parties,
28

1 about which Ally is without sufficient information or knowledge to either admit or
2 deny such allegations and, therefore, denies the same.

3 40. The allegations in Paragraph 40 of the Complaint refer to documents
4 which speak for themselves. To the extent the allegations are contrary to the
5 documents, they are denied.

6 41. The allegations in Paragraph 41 of the Complaint refer to other parties,
7 about which Ally is without sufficient information or knowledge to either admit or
8 deny such allegations and, therefore, denies the same.

9 42. Ally denies the allegations in Paragraph 42 of the Complaint.

10 43. The allegations in Paragraph 43 of the Complaint contain statements
11 and conclusions of law to which no response is required. To the extent the
12 allegations are contrary to law, they are denied.

13 44. The allegations in Paragraph 44 of the Complaint contain statements
14 and conclusions of law to which no response is required. To the extent the
15 allegations are contrary to law, they are denied.

16 45. Ally denies the allegations in the final sentence in Paragraph 45 of the
17 Complaint. The remaining allegations contain statements and conclusions of law to
18 which no response is required, and/or refer to other parties about which Ally is
19 without sufficient information or knowledge to either affirm or deny allegations
20 and, therefore, to the extent contrary to law or in reference to other parties, denies
21 the same.

22 46. The allegations in Paragraph 46 of the Complaint contain statements
23 and conclusions of law to which no response is required. To the extent the
24 allegations are contrary to law, they are denied.

25 47. Ally denies the allegations in Paragraph 47 of the Complaint
26 pertaining to it. The remaining allegations in Paragraph 47 contain statements and
27 conclusions of law to which no response is required. To the extent the allegations
28

are contrary to law, they are denied.

COUNT I

VIOLATION OF FAIR DEBT COLLECTION PRACTICES ACT (FDCPA), 15 U.S.C. § 1692e(2), (5), (8), and (10) BY ALL DEFENDANTS

48. Ally adopts and incorporates its responses to the previous paragraphs as if fully set forth herein.

49. The allegations in Paragraph 49 of the Complaint contain statements and conclusions of law to which no response is required. To the extent the allegations are contrary to law, they are denied.

50. Ally denies the allegations in Paragraph 50 of the Complaint pertaining to it. The remaining allegations in Paragraph 50 refer to other parties, about which Ally is without sufficient information or knowledge to either admit or deny such allegations and, therefore, denies the same.

51. Ally denies the allegations in Paragraph 51 of the Complaint pertaining to it. The remaining allegations in Paragraph 51 refer to other parties, about which Ally is without sufficient information or knowledge to either admit or deny such allegations and, therefore, denies the same.

52. Ally denies the allegations in Paragraph 52 of the Complaint pertaining to it. The remaining allegations in Paragraph 52 refer to other parties, about which Ally is without sufficient information or knowledge to either admit or deny such allegations and, therefore, denies the same.

53. Ally denies the allegations in Paragraph 53 of the Complaint pertaining to it. The remaining allegations in Paragraph 53 refer to other parties, about which Ally is without sufficient information or knowledge to either admit or deny such allegations and, therefore, denies the same.

54. Ally denies the allegations in Paragraph 54 of the Complaint pertaining to it. The remaining allegations in Paragraph 54 refer to other parties, about which Ally is without sufficient information or knowledge to either admit or

1 deny such allegations and, therefore, denies the same.

2 55. Ally denies the allegations in Paragraph 55 of the Complaint
3 pertaining to it. The remaining allegations in Paragraph 55 refer to other parties,
4 about which Ally is without sufficient information or knowledge to either admit or
5 deny such allegations and, therefore, denies the same.

6 56. Ally denies the allegations in Paragraph 56 of the Complaint
7 pertaining to it. The remaining allegations in Paragraph 56 refer to other parties,
8 about which Ally is without sufficient information or knowledge to either admit or
9 deny such allegations and, therefore, denies the same.

10 57. Ally denies the allegations in Paragraph 57 of the Complaint
11 pertaining to it. The remaining allegations in Paragraph 57 refer to other parties,
12 about which Ally is without sufficient information or knowledge to either admit or
13 deny such allegations and, therefore, denies the same.

14 Ally denies Plaintiff is entitled to the relief requested in the unnumbered
15 WHEREFORE paragraph, and subparagraphs A. through D., immediately
16 following Paragraph 57 of the Complaint.

17 **COUNT II**
18 **VIOLATION OF FAIR DEBT COLLECTION PRACTICES ACT (FDCPA),**
19 **15 U.S.C. § 1692g(a) BY ALL DEFENDANTS**

20 58. Ally adopts and incorporates its responses to the previous paragraphs
21 as if fully set forth herein.

22 59. The allegations in Paragraph 59 of the Complaint contain statements
23 and conclusions of law to which no response is required. To the extent the
24 allegations are contrary to law, they are denied.

25 60. The allegations in Paragraph 60 of the Complaint contain statements
26 and conclusions of law to which no response is required. To the extent the
27 allegations are contrary to law, they are denied.

28 61. The allegations in Paragraph 61 of the Complaint contain statements

1 and conclusions of law to which no response is required. To the extent the
2 allegations are contrary to law, they are denied.

3 62. The allegations in Paragraph 62 of the Complaint contain statements
4 and conclusions of law to which no response is required. To the extent the
5 allegations are contrary to law, they are denied.

6 63. The allegations in Paragraph 63 of the Complaint contain statements
7 and conclusions of law to which no response is required. To the extent the
8 allegations are contrary to law, they are denied.

9 64. The allegations in Paragraph 64 of the Complaint refer to other parties
10 about which Ally is without sufficient information or knowledge to either admit or
11 deny such allegations and, therefore, denies the same.

12 65. Ally denies the allegations in Paragraph 65 of the Complaint
13 pertaining to it. The remaining allegations in Paragraph 65 refer to other parties
14 about which Ally is without sufficient information or knowledge to either admit or
15 deny such allegations and, therefore, denies the same.

16 66. Ally denies the allegations in Paragraph 66 of the Complaint
17 pertaining to it. The remaining allegations in Paragraph 66 of the Complaint contain
18 statements and conclusions of law to which no response is required. To the extent
19 the allegations are contrary to law, they are denied.

20 Ally denies Plaintiff is entitled to the relief requested in the unnumbered
21 WHEREFORE paragraph, and subparagraphs A. through D., immediately
22 following Paragraph 66 of the Complaint.

23 **COUNT III**
24 **VIOLATION OF FAIR CREDIT REPORTING ACT (FCRA), 15 U.S.C. §**
25 **1681s-2(b) BY ALL DEFENDANTS**

26 67. Ally adopts and incorporates its responses to the previous paragraphs
27 as if fully set forth herein.

28 68. The allegations in Paragraph 68 of the Complaint contain statements

1 and conclusions of law to which no response is required. To the extent the
2 allegations are contrary to law, they are denied.

3 69. The allegations in Paragraph 69 of the Complaint refer to other parties
4 about which Ally is without sufficient information or knowledge to either admit or
5 deny such allegations and, therefore denies the same.

6 70. The allegations in Paragraph 70 of the Complaint contain statements
7 and conclusions of law to which no response is required. To the extent the
8 allegations are contrary to law, they are denied.

9 71. The allegations in Paragraph 71 of the Complaint contain statements
10 and conclusions of law to which no response is required. To the extent the
11 allegations are contrary to law, they are denied.

12 72. The allegations in Paragraph 72 of the Complaint contain statements
13 and conclusions of law to which no response is required. To the extent the
14 allegations are contrary to law, they are denied.

15 73. Ally denies Plaintiff is entitled to bring a claim for violations of 15
16 U.S.C. § 1681s-2(b) as Plaintiff is not a federal or state official, therefore Ally
17 denies the allegations in Paragraph 73 of the Complaint.

18 74. The allegations in Paragraph 74 of the Complaint contain statements
19 and conclusions of law to which no response is required. To the extent the
20 allegations are contrary to law, they are denied.

21 75. The allegations in Paragraph 68 of the Complaint contain statements
22 and conclusions of law to which no response is required. To the extent the
23 allegations are contrary to law, they are denied. Ally specifically denies its conduct
24 caused Plaintiff damages.

25 76. The allegations in Paragraph 76 of the Complaint contain statements
26 and conclusions of law to which no response is required. To the extent the
27 allegations are contrary to law, they are denied.
28

1 77. The allegations in Paragraph 77 of the Complaint contain statements
2 and conclusions of law and refer to documents that speak for themselves, to which
3 no response is required. To the extent the allegations are contrary to law and/or the
4 documents, they are denied.

5 78. The allegations in Paragraph 78 of the Complaint contain statements
6 and conclusions of law and refer to documents that speak for themselves, to which
7 no response is required. To the extent the allegations are contrary to law and/or the
8 documents, they are denied.

9 79. The allegations in Paragraph 79 of the Complaint contain statements
10 and conclusions of law and refer to documents that speak for themselves, to which
11 no response is required. To the extent the allegations are contrary to law and/or the
12 documents, they are denied.

13 80. The allegations in Paragraph 80 of the Complaint contain statements
14 and conclusions of law and refer to documents that speak for themselves, to which
15 no response is required. To the extent the allegations are contrary to law and/or the
16 documents, they are denied.

17 81. The allegations in Paragraph 81 of the Complaint contain statements
18 and conclusions of law to which no response is required. To the extent the
19 allegations are contrary to law, they are denied.

20 82. The allegations in Paragraph 82 of the Complaint contain statements
21 and conclusions of law and refer to documents that speak for themselves, to which
22 no response is required. To the extent the allegations are contrary to law and/or the
23 documents, they are denied.

24 83. The allegations in Paragraph 83 of the Complaint contain statements
25 and conclusions of law and refer to documents that speak for themselves, to which
26 no response is required. To the extent the allegations are contrary to law and/or the
27 documents, they are denied.
28

1 84. The allegations in Paragraph 84 of the Complaint contain statements
2 and conclusions of law to which no response is required. To the extent the
3 allegations are contrary to law, they are denied.

4 85. The allegations in Paragraph 85 of the Complaint contain statements
5 and conclusions of law to which no response is required. To the extent the
6 allegations are contrary to law, they are denied Ally denies its conduct is subject to
7 the Fair Debt Collection Practices Act as it is not a debt collector as defined in 15
8 U.S.C. § 1692a(6).

9 86. The allegations in Paragraph 86 of the Complaint contain statements
10 and conclusions of law and refer to documents that speak for themselves, to which
11 no response is required. To the extent the allegations are contrary to law and/or the
12 documents, they are denied.

13 87. The allegations in Paragraph 87 of the Complaint contain statements
14 and conclusions of law to which no response is required. To the extent the
15 allegations are contrary to law, they are denied.

16 88. Ally denies that it violated the FCRA. The remaining allegations in
17 Paragraph 88 of the Complaint contain statements and conclusions of law and refer
18 to documents that speak for themselves, to which no response is required. To the
19 extent the allegations are contrary to law and/or the documents, they are denied.

20 89. Ally denies that it violated the FCRA. The remaining allegations in
21 Paragraph 89 of the Complaint contain statements and conclusions of law and refer
22 to documents that speak for themselves, to which no response is required. To the
23 extent the allegations are contrary to law and/or the documents, they are denied.

24 90. Ally denies the allegations in Paragraph 90 of the Complaint
25 pertaining to it. The remaining allegations in Paragraph 90 refer to other parties,
26 about which Ally is without sufficient information or knowledge to either admit or
27 deny such allegations and, therefore, denies the same.
28

1 deny such allegations and, therefore, denies the same.

2 97. Ally denies the allegations in Paragraph 97 of the Complaint
3 pertaining to it. The remaining allegations in Paragraph 97 refer to other parties,
4 about which Ally is without sufficient information or knowledge to either admit or
5 deny such allegations and, therefore, denies the same.

6 98. Ally denies the allegations in Paragraph 98 of the Complaint
7 pertaining to it. The remaining allegations in Paragraph 98 refer to other parties,
8 about which Ally is without sufficient information or knowledge to either admit or
9 deny such allegations and, therefore, denies the same.

10 99. Ally denies the allegations in Paragraph 99 of the Complaint
11 pertaining to it. The remaining allegations in Paragraph 99 refer to other parties,
12 about which Ally is without sufficient information or knowledge to either admit or
13 deny such allegations and, therefore, denies the same.

14 100. Ally denies the allegations in Paragraph 100 of the Complaint
15 pertaining to it. The remaining allegations in Paragraph 100 refer to other parties,
16 about which Ally is without sufficient information or knowledge to either admit or
17 deny such allegations and, therefore, denies the same.

18 101. Ally denies Plaintiff is entitled to recover anything from Ally. The
19 remaining allegations in Paragraph 101 refer to other parties, about which Ally is
20 without sufficient information or knowledge to either admit or deny such
21 allegations and, therefore, denies the same.

22 Ally denies Plaintiff is entitled to the relief requested in the unnumbered
23 WHEREFORE paragraph, and subparagraphs A. through F., immediately following
24 Paragraph 101 of the Complaint.

25 **COUNT V**
26 **VIOLATION OF FCRA § 1681e(b)**
27 **BY ALL DEFENDANTS**

28 102. Ally adopts and incorporates its responses to the previous paragraphs

1 as if fully set forth herein.

2 103. Ally denies the allegations in Paragraph 103 of the Complaint
3 pertaining to it. The remaining allegations in Paragraph 103 refer to other parties,
4 about which Ally is without sufficient information or knowledge to either admit or
5 deny such allegations and, therefore, denies the same.

6 104. Ally denies the allegations in Paragraph 104 of the Complaint
7 pertaining to it. The remaining allegations in Paragraph 104 refer to other parties,
8 about which Ally is without sufficient information or knowledge to either admit or
9 deny such allegations and, therefore, denies the same.

10 105. Ally denies the allegations in Paragraph 105 of the Complaint
11 pertaining to it. The remaining allegations in Paragraph 105 refer to other parties,
12 about which Ally is without sufficient information or knowledge to either admit or
13 deny such allegations and, therefore, denies the same.

14 106. Ally denies the allegations in Paragraph 106 of the Complaint
15 pertaining to it. The remaining allegations in Paragraph 106 refer to other parties,
16 about which Ally is without sufficient information or knowledge to either admit or
17 deny such allegations and, therefore, denies the same.

18 107. Ally denies Plaintiff is entitled to recover anything from Ally. The
19 remaining allegations in Paragraph 107 of the Complaint refer to other parties about
20 which Ally is without sufficient information or knowledge to either admit or deny
21 such allegations and, therefore, denies the same.

22 Ally denies Plaintiff is entitled to the relief requested in the unnumbered
23 WHEREFORE paragraph, and subparagraphs A. through F., immediately following
24 Paragraph 107 of the Complaint.

25 **COUNT VI**
26 **VIOLATION OF CALIFORNIA ROSENTHAL FAIR DEBT COLLECTION**
27 **PRACTICES ACT (CAFDCA), CC § 1788**

28 108. Ally adopts and incorporates its responses to the previous paragraphs

1 as if fully set forth herein.

2 109. The allegations in Paragraph 109 of the Complaint contain statements
3 and conclusions of law to which no response is required. To the extent the
4 allegations are contrary to law, they are denied.

5 110. The allegations in Paragraph 110 of the Complaint contain statements
6 and conclusions of law to which no response is required. To the extent the
7 allegations are contrary to law, they are denied.

8 111. The allegations in Paragraph 111 of the Complaint contain statements
9 and conclusions of law to which no response is required. To the extent the
10 allegations are contrary to law, they are denied.

11 112. Ally denies the allegations in Paragraph 112 of the Complaint
12 pertaining to it. The remaining allegations in Paragraph 112 refer to other parties,
13 about which Ally is without sufficient information or knowledge to either admit or
14 deny such allegations and, therefore, denies the same.

15 113. Ally denies the allegations in Paragraph 113 of the Complaint
16 pertaining to it. The remaining allegations in Paragraph 113 refer to other parties,
17 about which Ally is without sufficient information or knowledge to either admit or
18 deny such allegations and, therefore, denies the same.

19 Ally denies Plaintiff is entitled to the relief requested in the unnumbered
20 WHEREFORE paragraph, and subparagraphs A. through C., immediately
21 following Paragraph 113 of the Complaint.

22 **DEMAND FOR JURY TRIAL**

23 Ally admits Plaintiff demands a jury trial.

24 **AFFIRMATIVE AND OTHER DEFENSES**

25 Without admitting any of Plaintiff's allegations or conceding the burden of
26 proof as to any issue found to be an element of the causes of action included in the
27 Complaint, Ally alleges the following separate affirmative and other defenses based
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on information and belief, with respect to Plaintiff.

1. The complaint fails to the extent it does not set forth facts sufficient to state a claim upon which relief may be granted against Ally and fails to state facts sufficient to entitle Plaintiff to the relief sought. Ally reserves the right to file a Motion for Judgment on the Pleadings or other dispositive motion seeking dismissal of Plaintiff's claims.

2. Plaintiff's claims fail to the extent that, at all relevant times with respect to Plaintiff, Ally acted in good faith and complied fully with applicable federal and/or state law.

3. Plaintiff cannot recover from Ally to the extent that any damages that Plaintiff may have suffered, which Ally continues to deny, directly and proximately resulted from Plaintiff's own acts and/or omissions.

4. Plaintiff cannot recover from Ally to the extent that any damages that Plaintiff may have or will suffer as alleged in the Complaint, which Ally continues to deny, have been and will be proximately caused, in whole or in part, by the negligent, willful, or tortious acts or omissions of persons or entities over whom Ally had no control, and for whom Ally is not responsible, which bars or diminishes any recovery by Plaintiff against Ally.

5. Plaintiff cannot recover from Ally to the extent that any damages allegedly suffered by Plaintiff were not caused by Ally, but by intervening causes.

6. Plaintiff's claims are barred, in whole or in part, to the extent Plaintiff has not suffered any actual damages.

7. Plaintiff's claims are barred, in whole or in part, to the extent Plaintiff has failed to mitigate his damages.

8. Plaintiff's claims for punitive damages fail to the extent that the Complaint fails to state a claim for relief for punitive damages. Additionally, Ally states that while it does not believe Plaintiff has stated a claim for punitive damages,

1 even if he proves an entitlement to any such punitive damage award, Ally is entitled
2 to the affirmative defense that any such award must comport with the Due Process
3 clause under the Constitution of the United States of America.

4 9. At all times relevant, Ally acted reasonably and in good faith and
5 without any malice or intent to injure Plaintiff or to violate applicable federal and/or
6 state law.

7 10. Plaintiff cannot recover from Ally under the Complaint to the extent that
8 Plaintiff lacks statutory or Constitutional standing due to lack of concrete and
9 particularized injury-in-fact.

10 11. Plaintiff's claims fail to the extent that they are barred by any applicable
11 statutes of limitation or by the doctrine of laches.

12 12. To the extent there was any violation of applicable law, which Ally
13 denies, Ally's actions were neither knowing nor willful because Ally's violations, if
14 any, were unintentional and the result of a bona fide error despite the maintenance of
15 procedures reasonably adapted to avoid such violations.

16 13. Any violation of applicable state law by Ally, if any, cannot proceed to
17 the extent preempted by federal law.

18 14. The injunctive remedies sought by Plaintiff are barred to the extent
19 Plaintiff has an adequate remedy at law and/or the alleged conduct which Plaintiff
20 seeks to enjoin is neither actively occurring nor threatened.

21 15. Ally reserves the right to seek leave from the Court to amend this answer
22 to allege additional affirmative defenses in the event discovery or other information
23 indicates they are appropriate.

24 **WHEREFORE**, Defendant Ally Financial Inc. prays for judgment against
25 Plaintiff as follows:

- 26 1. That Plaintiff take nothing by way of the Complaint;
27 2. That judgment be entered against Plaintiff dismissing the Complaint
28

1 with prejudice;

2 3. That judgment be entered in Ally's favor;

3 4. For costs of suit incurred herein;

4 5. For reasonable attorneys' fees incurred herein to the fullest extent
5 allowed by applicable law; and

6 6. For such other and further relief as the Court may deem just and proper.

7
8 Dated: _December 16, 2022

**TROUTMAN PEPPER HAMILTON
SANDERS LLP**

9
10 By: /s/ Peter B. Yould

11 Peter B. Yould

12 Attorneys for Defendant
13 Ally Financial Inc.

